

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-534

UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL.,
APPELLANTS

V.

JACINTA MORENO, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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DOCKET ENTRIES

No. 615-72 in the United States District Court for the District of Columbia.

Date

Proceedings

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| Mar. 30 | Complaint, filed |
| Mar. 30 | Summons, copies (6) and copies (6) of Complaint issued DA ser 3-31-72; #1, 2, 3 & 4 ser 3-31-72; Dept. of Justice ser 3-31-72. filed |
| Mar. 30 | Motion of Pltfs. for Temporary Restraining Order; Memorandum of Law; Appendix "A"; Affidavit of Jacinta Moreno; Affidavit of Victoria Keppler; Affidavit of Sheilah Ann Hejny; Affidavit of David S. Durrant with Exhibit A; Affidavit of David A. Kilmer with Exhibit A; Affidavit of Michael Hoffman, David McElyea, Deborah Jirel, Deborah Small and Michael Gaddy. filed |
| Mar. 30 | Motion of Pltfs. for a Preliminary Injunction. filed |
| Mar. 30 | Motion of Pltfs. for A Class Action Order. filed |
| Mar. 30 | Application of Pltfs. for Three-Judge Court; Memorandum. filed |
| Apr. 4 | Request to designate three-judge court. (N) Smith, J. |
| Apr. 5 | Opposition of Federal defts. to pltfs' request for temporary restraining order; aff.; exh. 1; P&A; statement; c/s 4-5-72. filed |
| Apr. 5 | Motion for temporary restraining order argued and granted; bond \$1.00 cash or security. (Order to be presented) Smith, J. |
| Apr. 6 | Injunction undertaking of pltf. in the amount of \$1.00 cash per order of April 6, 1972. filed |
| Apr. 6 | Order granting temporary restraining order until hearing by three-judge court; directing forthwith service by Marshal upon defts.; issued 10:45 a.m. (N) DA, AG & deft. ser. 4-6. Smith, J. |

Date

Proceedings

1972

- Apr. 10 Designation of the Hon. Carl McGowan, United States Circuit Judge and the Hon. Aubrey E. Robinson, Jr., United States District Judge to serve with the Honorable John Lewis Smith, Jr. as members of a three-judge panel to hear and determine this cause. (N) Bazelon, C. J., U.S.C.A.
- Apr. 14 Opposition of defts. to pltf's motion for a preliminary injunction; motion to dissolve the temporary restraining order; motion to dismiss; statement; P&A; c/m 4-14. filed
- Apr. 14 Motion for preliminary injunction argued and taken under advisement; counsel for pltf. and deft. granted five days to file memo. on matter or jurisdiction; temporary restraining order continued until further order. McGowan, J., Robison, J., Smith, J.
- Apr. 19 Cross motion of pltf. for summary judgment; P&A; appendix A; c/m 4-18; M.C. filed
- Apr. 20 Supplemental P&A by defts. in support of proposition that this court lacks jurisdiction; c/m 4-20. filed
- May 26 Memorandum opinion in favor of pltf's. Smith, J.
- May 26 Order granting pltf's motion for summary judgment; denying defts' motion for summary judgment; enjoining defts. from denying food stamp eligibility to pltf's. (N) (see order for details) McGowan, J., Smith, J., Robinson, J.
- Jun. 23 Notice of appeal by defts. to Supreme Court from judgment of May 26, 1972.

No. 72-534 in the United States Supreme Court.

1972

Aug. 16 **Order Extending the Time for Docketing The Appeal.**

Oct. 2 **Jurisdictional Statement Filed.**

Nov. 1 **Motion to Affirm Filed.**

Dec. 4 **Order Noting Probable Jurisdiction.**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed March 30, 1972]

JACINTA MORENO (residing at 18720 S.W. 270 Terrace; Homestead, Florida); VICTORIA KEPPLER (residing at 208 Modoc; Oakland, California); SHEILA ANN HEJNY (residing at Route 3, Trailer #9, Willamont Drive; Kernersville, North Carolina); DAVID A. KILMER and DAVID S. DURRANT (both residing at 84 N Street; Salt Lake City, Utah); MICHAEL GADDY, DEBORAH JIREL, MICHAEL HOFFMAN, DEBORAH SMALL and DAVID McELYEA (all residing at 727 Sims Street; Columbia, South Carolina); for themselves, their households, and all other persons similarly situated,

PLAINTIFFS,

—VS.—

THE UNITED STATES DEPARTMENT OF AGRICULTURE; EARL L. BUTZ, individually and in his capacity as Secretary of the United States Department of Agriculture; EDWARD J. HEKMAN, individually and in his capacity as Administrator of the Agriculture Department's Food and Nutrition Service; JAMES KOCHER, individually and in his capacity as Food Stamp Division Director of the Agriculture Department's Food and Nutrition Service,

DEFENDANTS.

Civil Action
No.
Complaint for
Declaratory and
Injunctive Relief
Application for
Three-Judge
Court

I. INTRODUCTION

1. This civil action for declaratory and injunctive relief is brought because the plaintiffs seek to enjoin the implementation of the "anti-hippy commune" provision in the

Food Stamp Act [7 U.S.C. § 2012(e), as amended by P.L. 91-671 (Jan. 11, 1971)] and the regulations promulgated thereunder [7 C.F.R. §§ 270.2(jj) and 271.3(a), as published in 36 Fed. Reg. 14103, 14106 (July 29, 1971)]. Although the plaintiffs are impoverished persons with insufficient resources to purchase a nutritionally adequate diet, and although the plaintiffs are not—and do not consider themselves to be—hippies, they are denied Federal food stamps *solely* because of the “anti-hippy commune” provisions in the Food Stamp Act and regulations. Those provisions deny food stamps to needy persons and families who reside in households in which at least one individual is unrelated to all of the other household members.

2. The Food Stamp Act [7 U.S.C. §§ 2011 *et seq.*] was passed by Congress in 1964, and amended in 1971 [P.L. 91-671], to provide direct relief against conditions of under-nutrition and hunger existing throughout the country. The operation of the Food Stamp Program is fairly simple: a poverty-stricken household is charged with a certain amount of money and in exchange receives food stamps of greater value. The difference between the stamps received—the “coupon allotment”—and the cost of the stamps is a bonus which provides recipients with a direct increase in food purchasing power. The allotment provided to recipients is intended to provide them with the means of purchasing “a nutritionally adequate diet through normal channels of trade.” [7 U.S.C. § 2011] Participation in the Program is limited to impoverished *households*. [7 U.S.C. § 2014(a)]

3. Prior to the 1971 amendments to the Food Stamp Act, impoverished households were eligible for food assistance regardless of whether there were unrelated people residing therein. Due to the passage of the 1971 amendments to the Act and the promulgation of regulations pursuant thereto [see 7 U.S.C. § 2012(e), after the passage of P.L. 91-671; 7 C.F.R. §§ 270.2(jj) and 271.3(a), as contained in 36 Fed. Reg. 14103 and 14106], no person—no matter how needy, hungry or malnourished—is eligible to receive health-vital food stamp aid if he resides in a household where one or more persons, under 60 years of age, is unrelated to everyone else in the household.

4. As a result of the amended statute and regulations, the plaintiffs—who are financially eligible for food stamps

but who live in households in which all members are not related to one another—will no longer be able to participate in the Food Stamp Program. They, like several hundred thousands of other indigents, will be excluded from health-vital food aid solely because they live with unrelated persons due to economic necessity.

5. Although the statutory amendment was directed exclusively against “hippy communes,”* the poorest of the poor will be most harmfully effected by the new statutory and regulatory provisions. Since the poorest of the poor frequently are unable to pay for shelter costs and must, therefore, frequently reside with friends or former neighbors, they will be severely and irreparably harmed by the new statutory and regulatory provisions.

6. The “anti-hippy commune” provisions in the statute and regulations are unlawful for the following reasons:

(a) They impinge upon plaintiffs’ privacy rights to associate, in the confines of their home, with whomever they choose, thereby violating the First, Fifth and Ninth Amendments to the United States Constitution;

(b) They violate plaintiffs’ rights to equal protection since the statute and regulations create two different classes—(1) needy persons who reside in households where everyone is related, and (2) needy persons who reside in households where everyone is not related—and discriminate against the latter class in the provision of health-vital food aid without any rational justification therefor, thereby violating the Fifth Amendment to the United States Constitution; and

(c) They violate plaintiffs’ rights to equal protection since the discriminatory deprivation of food assistance impinges upon plaintiffs’ freedom of association without there being a “compelling governmental interest” to justify said discrimination, thereby violating the Fifth Amendment to the United States Constitution.

7. The “anti-hippy commune” regulations are further unlawful insofar as they are contrary to the Food Stamp Act. Under section 3(e) of the Act [7 U.S.C. § 2012(e)], only unrelated *individuals* in a household are to be denied

* See Conf. Rep. as set forth at Cong. Rec., 91st Cong., 2d Sess. (12/22/70) at H12267; see also Cong. Rec., 91st Cong., 2d Sess. (12/31/70), at S21682 and S21690.

food stamp aid. Contrary to the Act, however, the regulations exclude everyone—*individuals and families*—when one or more unrelated persons reside in the same house.

II. JURISDICTION

8. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1332, 1337, 1361; and 5 U.S.C. § 702 (the Administrative Procedure Act). The amount in controversy, exclusive of interest and costs, exceeds \$10,000. A declaration of plaintiffs' rights is sought pursuant to 28 U.S.C. §§ 2201 and 2202.

III. THREE-JUDGE COURT

9. This is a proper case for determination by a three-judge Court pursuant to 28 U.S.C. §§ 2282 and 2284, since plaintiffs seek an injunction to restrain defendants, who are Federal officials, from the enforcement, operation and execution of the Federal statute and Federal regulations on the ground that said statute and regulations are contrary to the Constitution of the United States.

IV. PLAINTIFFS

10. All of the plaintiffs are poor and fall within the national income eligibility standards set by the Agriculture Department for Food Stamp Program participation. The plaintiffs are from five different cities and states; they reside in: Homestead, Florida; Oakland, California; Kernersville, North Carolina; Salt Lake City, Utah; and Columbia, South Carolina. Despite plaintiffs' vulnerable nutritional status, and although they were previously eligible for Federal food assistance, they have been denied food stamp eligibility because each one of them lives in a household in which there is at least one individual unrelated to all of the other household members. Consequently, the plaintiffs are unable to obtain adequate nutrition for themselves and their households.

A. The MORENO Household

11. Plaintiff JACINTA MORENO is 56 years of age. Since plaintiff MORENO is a diabetic and in extremely

poor health, she has decided to live with Ermina Sanchez and the latter's three children in Homestead, Florida. Mrs. Sanchez helps to take care of plaintiff MORENO, and the two of them share common living expenses. Plaintiff MORENO's monthly income is \$75, derived entirely from public welfare; Mrs. Sanchez receives a total monthly income of \$133, derived entirely from the Aid to Needy Families With Dependent Children Program. Out of this income, the household pays: \$95 per month for rent (of which plaintiff MORENO pays \$40) and \$40 a month for gas and electricity (of which \$10 is paid by the plaintiff). In addition, plaintiff MORENO must spend \$10 for transportation for her two monthly visits to the hospital, and \$5 each month for laundry expenses. As a result, plaintiff MORENO has only \$10 remaining each month with which to purchase food and other necessities. This is wholly inadequate, particularly since plaintiff MORENO needs special foods for her poor health condition.

12. On February 1, 1972, plaintiff MORENO's application for food stamps was denied solely because she is unrelated to all of the other members of her household. If the "anti-hippy commune" provisions of the Act and regulations did not exist, plaintiff MORENO would be eligible for \$32 in monthly food stamps. Instead, however, the "anti-hippy commune" provision disqualifies plaintiff MORENO from all Federal food assistance. This causes severe and irreparable harm to plaintiff MORENO's very vulnerable health condition.

B. The KEPPLER Household

13. Plaintiff VICTORIA KEPPLER resides in Oakland, California with her two children. Plaintiff KEPPLER's daughter suffers from an acute hearing deficiency and she must, therefore, attend a school for the deaf—Chabot Public School—which provides her with treatment and special educational services. Since plaintiff KEPPLER is a public assistance recipient with a total monthly income of \$235, she has found it impossible to afford decent housing arrangements within the vicinity of her daughter's school. Consequently, plaintiff KEPPLER and an unrelated friend—who is also receiving welfare—have moved into a house together. By combining their resources, plaintiff KEPP-

LER and her friend are barely able to afford the \$275 monthly rent for a house outside of the slums and near the Chabot Public School.

14. Although plaintiff KEPPLER is poor and unable to obtain a nutritionally adequate diet for herself and her children, she has been denied food stamp eligibility because of the "anti-hippy commune" provisions in the food stamp regulations. If plaintiff KEPPLER did not share the same house with an unrelated friend, she would be eligible for \$88 every month in food stamps. Consequently, plaintiff KEPPLER faces the following tragic dilemma: *either* move out of the house, in order to obtain food stamps, thereby relocating in dilapidated housing considerably far away from the Chabot Public School; *or* stay in the house and continue to be deprived of health-vital food assistance.

C. The HEJNY Household

15. Plaintiff SHELIAH ANN HEJNY resides in Kernersville, North Carolina with her husband, David Lee Hejny, their three children, and Sharon Sharp. Sharon is 20 years old and is unrelated to the HEJNY family. Prior to moving in with the HEJNY family, Sharon lived in a "children's home" (from ages 7 to 18); after leaving the "children's home," she lived with her mother until November 21, 1970, when her mother forced Sharon to leave the Sharp's home. On that date, plaintiff HEJNY—who was a next door neighbor to the Sharp family—started to take care of Sharon and they have resided together ever since. Since moving into the HEJNY household, Sharon has become an integral member of the household and has received much love and care.

16. The HEJNY household has a total monthly income of about \$410—\$390 from David Hejny's job as a pipe-layer, and \$20 from Sharon's job as a babysitter for neighbors. Out of this meager income the household pays \$38.50 every week for the rental of a trailer, and \$70 every week for back rent still owed. In addition, the household has substantial monthly expenditures for clothing, food, household goods, hygienic needs, laundry, personal incidentals, and medical expenses. Currently, the household has huge debts that they are trying to pay off: \$1400 in medical bills due to the repeated health problems of daughter Tracy Hejny

(who was born with an open spine and who, as a result, was operated on, and hospitalized, numerous times); and \$800 in medical bills as a result of plaintiff HEJNY's gall bladder operation in June, 1971. Further medical expenses are expected very shortly due to Tracy's condition, and because David Hejny has a hereditary tumor that will require surgery very soon.

17. As a result of the HEJNY's impoverished circumstances, they are in great need of food aid. During February, 1972, the household was certified for food assistance and received \$144 in food stamps at a cost of \$14. On or about February 28, 1972, plaintiff HEJNY was informed that the household would no longer be eligible for food assistance due to Sharon's presence in the home. In March, 1972, they did not receive any food stamps. This, and any continued, deprivation of Federal food assistance will cause irreparable injury insofar as the household's limited income, and large debts, make it impossible to obtain a nutritionally adequate diet. The HEJNY household is denied the opportunity to receive proper nutrition solely because they have been charitable enough to care and provide for a previously unwanted child.

D. The KILMER-DURRANT Household

18. Plaintiffs DAVID A. KILMER and DAVID S. DURRANT share common living quarters in Salt Lake City, Utah. They have found it necessary to share living quarters because they are poor and their housing arrangements minimize necessary expenses. Plaintiff KILMER earns approximately \$70 per month by performing numerous jobs such as housing repairs and remodeling. Plaintiff DURRANT earns approximately \$100 per month from similar work. Out of this approximate \$170 in income, plaintiffs KILMER and DURRANT have the following monthly expenses: rent—\$100; gas, water and sewage—\$40; electricity—\$5; laundry—\$5; and food—\$30. In addition, the plaintiffs have expenses for clothing, hygienic needs and personal incidentals. Moreover, they must pay \$36 every month for car payments and about \$20 for oil and gas. These car expenses are necessary because of the distance that must be travelled to plaintiffs' jobs and because plaintiff DUR-

RANT receives job rehabilitation instruction at the University of Utah.

19. As a result of their impoverished status, plaintiffs KILMER and DURRANT have frequently been unable to pay for their household expenses and they have been forced to drastically limit their food purchases. They applied for food stamp relief on January 10, 1972 but were denied such aid because they compose a household of unrelated individuals. Solely as a result of the "anti-hippy commune" provisions, they are denied \$60 in monthly food stamp benefits that they would otherwise be entitled to. Plaintiffs sought an administrative hearing on the denial decision and such hearing was conducted on February 14, 1972. Shortly thereafter, the decision to deny food stamp eligibility was affirmed. As a result, plaintiffs KILMER and DURRANT are, and will be, denied the \$60 in food stamp aid that they desperately need in order to obtain adequate nutrition.

*E. The Household of MICHAEL GADDY,
DEBORAH JIREL, MICHAEL HOFFMAN,
DEBORAH SMALL and DAVID McELYEA*

20. Plaintiffs MICHAEL GADDY, DEBORAH JIREL, MICHAEL HOFFMAN, DEBORAH SMALL and DAVID McELYEA reside together in Columbia, South Carolina. Plaintiffs JIREL, HOFFMAN, SMALL and McELYEA are presently unemployed and are seeking a job. Plaintiff GADDY is a full-time student at the University of South Carolina. The five plaintiffs, being without a steady income, have chosen to live together partially because they wish to reduce their expenses, and partially because they have a strong social affinity for one another. The household's monthly expenses include: rent—\$75; food—\$120; utilities—\$34; telephone—\$14; laundry—\$10; and automobile costs—\$30.

21. Since the plaintiffs are without income and are impoverished, they are in dire need of food stamp assistance. They are *financially* eligible for \$128 in monthly food stamps for no cost whatsoever. As a result of the related household provisions in the Act and regulations, however, they have been declared ineligible for Federal food assist-

ance. Consequently, they suffer irreparable injury due to their inability to obtain adequate food sustenance.

V. PLAINTIFFS BRING THIS SUIT AS A CLASS ACTION

22. Plaintiffs are all impoverished persons who need food stamps for their nutritional well-being, but who are denied health-vital food relief solely because they live in households in which all persons residing therein are not related to one another. Many thousands of needy persons throughout the country are similarly aggrieved by the "anti-hippy commune" provision of the Food Stamp Act and the regulations promulgated thereunder. Consequently, plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, in their own behalf, in behalf of their households, and in behalf of indigents throughout the country who are similarly aggrieved by the defendants' unconstitutional denials of food stamps. The questions of fact and law are common to the plaintiffs and the class they represent, and the members of the class are so numerous as to make joinder of parties impracticable. The claims of the plaintiffs are typical of the claims of all members of their class, and the plaintiffs will fairly and adequately represent the claims of all members of the class. The defendants have acted or refused to act on grounds generally applicable to the entire class.

VI. THE DEFENDANTS

23. Defendant EARL L. BUTZ is the Secretary of the United States Department of Agriculture. Defendant EDWARD J. HEKMAN is the Administrator of the Agriculture Department's Food and Nutrition Service. Defendant JAMES KOCHER is the Food Stamp Division Director of the Agriculture Department's Food and Nutrition Service. Since the Food Stamp Division of the Agriculture Department's Food and Nutrition Service is the agency responsible for administering the nationwide Food Stamp Program, the defendants are fully responsible for implementing the unconstitutional statutory and regulatory provisions challenged herein.

VII. CAUSES OF ACTION

24. The Food Stamp Program was established by Congress in 1964 to alleviate hunger and malnutrition among low-income groups. The Program was designed to provide needy households with sufficient food stamps so that they can obtain a "nutritionally adequate diet through normal channels of trade." [7 U.S.C. § 2011] For poor people throughout the country, the Food Stamp Program provides the difference between undernutrition and nutritional adequacy. Eligibility in the Program is limited exclusively to a household basis.

25. Prior to the 1971 amendments to the Food Stamp Act [P. L. 91-671 (Jan. 11, 1971)], section 3(e) of the Act defined a "household" as follows:

The term "household" shall mean a group of *related or non-related* individuals, who are not residents of an institution or a boarding house, but are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common. The term "household" shall also mean a single individual living alone who has cooking facilities and who purchases and prepares food for home consumption. [7 U.S.C. § 2012(e), prior to P.L. 91-671] (emphasis added)

26. The 1971 amendments substantially altered the Food Stamp Act. *Inter alia*, the new legislation contained an "anti-hippy commune" provision that amended section 3 (e) of the Act to read as follows:

The term "household" shall mean a group of *related individuals* (including legally adopted children and legally assigned foster children) *or non-related individuals over age 60* who are not residents of an institution or boarding house, but are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common. The term "household" shall also mean (1) a single individual living alone who has cooking facilities and who purchases and prepares food for home consumption; or (2) an elderly person who meets the requirements of section 10(h) of this Act. [7 U.S.C. § 2012(e)] (emphasis added)

27. The intent of Congress in redefining the term "household" was to eliminate "hippy communes" from the Food Stamp Program. Although there is sparse legislative history on this provision—since it was introduced for the first time during the Conference Committee's deliberations on the differing House and Senate versions of the Food Stamp Act amendments—it is clear that the amendment to section 3(e) was intended to exclude "hippy communes" from Federal food assistance. [See Conf. Rep. as set forth at Cong. Rec., 91st Cong., 2d Sess. (12/22/70), at H12267; see, also, Cong. Rec., 91st Cong., 2d Sess. (12/31/70), at S21682 and S21690]

28. On July 29, 1971, the defendants promulgated regulations pursuant to the new Food Stamp Act amendments. Two sections of the regulations, 7 C.F.R. §§ 270.2(jj) and 271.3(a), were promulgated to implement section 3(e) of the Act. Those sections state:

"Household" means a group of persons, excluding roomers, boarders, and unrelated live-in attendants necessary for medical, housekeeping, or child care reasons, who are not residents of an institution or boarding house, and who are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common:

Provided, That:

(1) *When all persons in the group are under 60 years of age, they are all related to each other, and*

(2) *When more than one of the persons in the group is under 60 years of age, and one or more other persons in the group is 60 years of age or older, each of the persons under 60 years of age is related to each other or to at least one of the persons who is 60 years of age or older. It shall also mean (i) a single individual living alone who purchases and prepares food for home consumption, or (ii) an elderly person as defined in this section, and his spouse. [7 C.F.R. § 270.2(jj)] (emphasis added)*

Eligibility for and participation in the program shall be on a household basis. All persons, excluding roomers, boarders, and unrelated live-in attendants neces-

sary for medical, housekeeping, or child care reasons, *residing in common living quarters shall be consolidated into a group prior to determining if such a group is a household as determined in § 270.2(jj) of this subchapter.* [7 C.F.R. § 271.3(a)] (emphasis added)

29. All of the plaintiffs are financially eligible for food stamp assistance. Solely as a result of the new "anti-hippy commune" provisions in the Act and regulations, the needy plaintiffs are being denied this health-vital food aid. The "anti-hippy commune" provisions went into effect either on January, February or March, 1972, depending upon the State.

30. Paragraphs 11-21 are reiterated and incorporated herein.

A. Plaintiffs' Privacy Rights to Freedom of Association in the Confines of Their Home.

31. The impoverished plaintiffs herein reside with unrelated people in order to minimize their costs of living, and/or because of related social necessities. By living with persons to whom they are unrelated by blood or marriage, the plaintiffs are exercising their inalienable rights to privacy and to freedom of association as guaranteed by the First, Fifth and Ninth Amendments to the United States Constitution.

32. Plaintiffs' constitutional rights to freedom of association are particularly free from governmental invasion when such rights are exercised in the privacy of their home. Inherent in the Constitution is plaintiffs' right to safety from governmental invasion when such plaintiffs are engaged in legal activities in the confines of their home.

33. By denying plaintiffs health-vital food assistance solely because their households include one or more unrelated members, the plaintiffs are being penalized for exercising their inalienable constitutional rights to privacy and freedom of association. This impingement upon plaintiffs' constitutional rights is not justified by any compelling governmental interest.

34. In addition, the prohibitive sweep of the statute and regulations is overly broad, thereby harming indigents who were not intended to be excluded from food stamp assist-

ance. Although the plaintiffs are not—and do not consider themselves to be—hippies, their freedom of association is being violated, and they are denied vital food stamp relief, solely because of the “anti-hippy commune” provisions in the Act and regulations. This overly-broad governmental effort to regulate plaintiffs’ lives, particularly in the confines of their home, violates plaintiffs’ rights to privacy and freedom of association.

35. As a result, the “anti-hippy commune” provisions of the Food Stamp Act and regulations are violative of the First, Fifth and Ninth Amendments to the United States Constitution.

B. Plaintiffs’ Rights to Equal Protection

36. The “anti-hippy commune” provisions create two classes of persons for purposes of food stamp eligibility; *one class* composed of persons financially in need of food stamp relief who reside in households in which all members are related to one another; and *another class* composed of persons similarly in need of food stamp relief, but who live in households that include one or more members who are unrelated to everyone else in the household. Except for this difference, members of the latter class are indistinguishable from those in the former class.

37. Persons in the second class—including the plaintiffs herein—are denied food stamps but persons in the first class are eligible for food stamp relief. This arbitrary and capricious discriminatory deprivation of food assistance is not rationally related to any legitimate governmental purpose, and is wholly unrelated to the purposes of the Food Stamp Act.

38. In addition, the discriminatory deprivation of food assistance impinges upon plaintiffs’ constitutional rights of freedom of association. The Congressional intent to deprive “hippy households” of food stamp relief does not constitute a “compelling governmental interest” that could justify this discrimination that impinges upon plaintiffs’ rights to freedom of association.

39. As a result, the “anti-hippy commune” provisions of the Food Stamp Act and regulations violate plaintiffs’ rights to Equal Protection as guaranteed by the Fifth Amendment to the United States Constitution.

C. The Regulations Conflict With the Act

40. Section 3(e) of the Act [7 U.S.C. § 2012(e)], while excluding unrelated "*individuals*" from food stamp assistance, permits impoverished *families* to be eligible for food stamp assistance. Each family may constitute a group of related individuals "living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common." [7 U.S.C. § 2012(e)] Section 3(e), therefore, would *deny food stamp eligibility only to the unrelated individuals* living under the same roof as the impoverished *families*, but would extend eligibility to those *families*.

41. Congressional intent was to exclude "hippy communes" of *unrelated individuals* from food stamp assistance; Congress did not intend to exclude impoverished *families* from the Program, regardless of who lived with them.

42. The regulations promulgated by the defendants deny food stamp eligibility to both unrelated individuals and to the families they live with. Consequently, the defendants have denied food stamps to the KEPLER and HEJNY families despite their clear eligibility under the Act.* In so doing, the defendants have violated sections 3(e) and 4(a) of the Food Stamp Act. [7 U.S.C. §§ 2012(e) and 2013(a)]

VIII. THE HARM TO PLAINTIFFS AND THEIR CLASS

43. Plaintiffs' impoverished circumstances have left them unable to obtain a nutritionally adequate diet. They and their households are in dire need of food assistance so that they can obtain proper nutrition. If plaintiffs and their class do not receive food stamp aid, they and their households will be subjected to the irreparable injuries resulting from hunger, undernutrition, and consequent ill-health.

44. Since the plaintiffs are poor, they have decided to live with unrelated people in order to economize their meager resources and to provide better health care and

* Plaintiffs MORENO, KILMER, DURRANT, GADDY, JIREL, HOFFMAN, SMALL and McELYEA, as well as Sharon Sharp (who resides in the HEJNY household), are unaffected by defendants' violation of the Food Stamp Act. Their claims are based exclusively on their constitutional rights to privacy, equal protection and freedom of association.

sustenance for one another. The "anti-hippy commune" provisions of the Act and regulations have a very chilling effect on plaintiffs' freedom of association and privacy rights and may cause them to change their current living arrangements. This would cause further economic hardship for the plaintiffs, and would irreparably harm their physiological and psychological well-being.

IX. PRAYER FOR RELIEF

45. Plaintiffs, and all others similarly situated, are suffering, and will continue to suffer, grievous injury as a result of the "anti-hippy commune" provisions in the Food Stamp Act and regulations. They seek relief from these unlawful and unconstitutional provisions. No previous application for the relief sought herein has been made to this or any other Court. No adequate administrative remedy or adequate remedy at law is available to the plaintiffs.

WHEREFORE, plaintiffs, on behalf of themselves, their households, and all others similarly situated, pray that this Court:

- a. Assume jurisdiction of this case;
- b. Convene a three-judge Court, pursuant to 28 U.S.C. §§ 2282 and 2284, and set this case down promptly for a hearing and determination of this controversy;
- c. Order, pursuant to Rules 23(b)(2) and 23(c)(1) of the Federal Rules of Civil Procedure, that this action shall be maintained as a class action in behalf of all impoverished households in the country who are similarly aggrieved by the "anti-hippy commune" provisions of the Food Stamp Act and regulations;
- d. Grant a temporary restraining order pursuant to 28 U.S.C. § 2284(3), pending a hearing and determination by the three-judge Court, enjoining the defendants from denying health-vital food stamps to plaintiffs, and all other impoverished persons similarly situated, solely on the basis that such individuals reside in households in which all members are not related to one another;
- e. Declare that the "anti-hippy commune" provisions of the Food Stamp Act and regulations violate plaintiffs' rights to privacy and freedom of association as guaranteed by the First, Fifth and Ninth Amendments to the United States Constitution;

f. Declare that the "anti-hippy commune" provisions of the Food Stamp Act and regulations violate plaintiffs' rights to equal protection as guaranteed by the Fifth Amendment to the United States Constitution;

g. Declare that the regulations promulgated by the defendants [7 C.F.R. §§ 270.2(jj) and 271.3(a)] violate sections 3(e) and 4(a) of the Food Stamp Act [7 U.S.C. §§ 2012(e) and 2013(a)];

h. Preliminarily and permanently enjoin the defendants—their agents, employees and successors in office—from denying food stamp eligibility to the plaintiffs, and all other persons similarly situated, on the basis that all members in their households are not related to one another; and

i. Provide such further relief as this Court may deem proper and just.

Respectfully submitted,

/s/ Ronald F. Pollack

RONALD F. POLLACK

Center on Social Welfare

Policy and Law

401 West 117th Street

New York City, New York 10027

(212) 280-4112

/s/ Roger Schwartz

ROGER SCHWARTZ

401 West 117th Street

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 (202) 624-8318

[Title Omitted in Printing]

[Filed March 30, 1972]

APPLICATION FOR THREE-JUDGE COURT

Plaintiffs, pursuant to 28 U.S.C. §§ 2282 and 2284, respectfully move this Court to apply to:

The Chief Judge of the Circuit to convene a statutory Court of three judges for the purpose of hearing and determining this application for a preliminary and permanent injunction. As reason therefor, plaintiffs would show that a preliminary and permanent injunction is being sought to restrain Federal officials from enforcing a Federal statute that is alleged to conflict with the Constitution of the United States. The preliminary and permanent injunctions are sought to restrain the defendants from denying plaintiffs, and all persons similarly situated, eligibility in the Food Stamp Program solely on the basis that plaintiffs live in households in which all members are not related to one another.

Plaintiffs seek this relief for themselves and all others similarly situated on the grounds that:

a. They and all others similarly situated are suffering irreparable damage in that without food stamp benefits they are unable to provide themselves and their families with a nutritionally adequate diet;

b. Section 3(e) of the Food Stamp Act [7 U.S.C. § 2012 (e)] and the regulations promulgated thereunder [7 C.F.R. §§ 270.2(jj) and 271.3(a)] deny plaintiffs food stamps because they reside in homes with unrelated persons, thereby violating plaintiffs' rights to equal protection, privacy and freedom of association as guaranteed by the First, Fifth and Ninth Amendments of the United States Constitution.

c. Plaintiffs have no adequate remedy at law.

Respectfully submitted,

/s/ Ronald F. Pollack

RONALD F. POLLACK

**Center on Social Welfare
Policy and Law**

**401 West 117th Street
New York, New York 10027
(212) 280-4112**

/s/ Roger Schwartz

ROGER SCHWARTZ

**401 West 117th Street
New York, New York 10027**

JOHN R. KRAMER

**Georgetown Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20002
(202) 624-8318**

[Title Omitted in Printing]

AFFIDAVIT OF JACINTA MORENO

STATE OF FLORIDA }
COUNTY OF DADE } ss:

[Filed March 30, 1972]

JACINTA MORENO, being duly sworn, deposes and says:

1. I am a plaintiff in this lawsuit. I am 56 years old and reside at 18720 S.W. 270 Terrace, Homestead, Florida.

2. My household consists of five persons: myself, Ermina Sanchez, 37, and her three children, Ramon, Jr., 7, Sylvia, 6, and Pauline, 1. Mrs. Sanchez and her three children are not related by blood to myself.

3. Both Ermina Sanchez and myself receive a minimal monthly income which would be insubstantial for us to live on as separate households. We chose to share one household in order to minimize our costs of living. We share the cost of rent, food and other household items, and share the use of these items as well as the use of our kitchen facilities. I have found this arrangement to be both economically and socially beneficial.

4. My income for the month of January, 1972, was \$75 which I received from the Dade County Department of Public Welfare, for the support and maintenance of myself. This check was based on my living cost in Homestead, Florida.

5. Ermina Sanchez's monthly income for this month consisted solely of \$133 from the State of Florida, Department of Public Welfare, Aid to Dependent Children Program.

6. I anticipate that the total monthly income of our household for February 1972 will be approximately \$208, consisting of my monthly public assistance grant and Ermina Sanchez's monthly public assistance grant.

7. My monthly household expenses include the following items:

Rent	\$40	
Gas & Electricity (monthly average)	10	
Transportation	10	Total \$75
Laundry	5	
Food	10	

(This is all that's left from Welfare check)

In addition to these expenditures we have costs for clothing, hygienic needs and other personal incidentals.

8. Medical problems have added a substantial expense to the monthly household budget. At present I make two monthly trips to the county hospital due to my condition of diabetes. The county hospital furnishes medication to me without charge due to my inability to pay. However, I am advised to follow a strict diet, which I am not able to adhere to due to financial inability.

9. Mrs. Sanchez's monthly household expenses include the following items:

Rent	\$55	
Gas & Electricity (monthly average)	30	
Transportation	15	Total \$133
Laundry	15	
Food	18	

10. We are barely able to meet these monthly living expenses. Our success in the past is partially due to the aid Ermina Sanchez receives through Food Stamps. She is certified as the head of a four-member household and pays \$18 each month for \$108 worth of coupons. This bonus of \$90 is essential since it allows us to meet our nutritional needs.

11. I have applied for food stamps before. The latest date was February 1, 1972, at the local Food Stamp Office in Homestead. I was told I was not eligible because of our unrelated household status and denied stamps.

12. The loss of food stamps seriously affects my household. I am unable to meet the high cost of living and the badly needed special dietary requirements I have had in the past. Consequently, I buy less food for myself and I do without necessary personal and hygienic needs. I am,

in short, burdened with additional expenses that I cannot afford and still hope to maintain a poor but healthy household.

13. If the new Food Stamp statute and regulations requiring that a Food Stamp household contain only related individuals were not in effect, I would benefit from Food Stamps. I estimate that I could purchase monthly \$32 worth of stamps for a maximum of \$12, thereby saving \$20, a sum equivalent to 26 per cent of my present income. My saving will probably be a good deal higher since I am entitled to medical deductions in calculating my monthly income.

14. If the new Food Stamp regulations allowed unrelated households to be eligible for Food Stamps, I could expect to provide myself with a more medically and nutritionally sound diet. As long as I am denied eligibility, however, I will have to continue to deprive myself of necessary food, clothing and household items, and the promise of food relief to those of us in low-income families shall be meaningless.

/s/ X (Jacinta Moreno)

JACINTA MORENO

Witness: Norma Cabrera

Joe Alexander

Subscribed and sworn to
as true before me this
22nd day of February,
1972.

Brenda Sue Baldwin
Notary Public, State of
Florida at large.

My commission expires:
Notary Public, State of Florida at Large,
My commission expires Nov. 9, 1975,
Bonded thru Gen. Insur. Underwriters, Inc.

[Title Omitted in Printing]

[Filed March 30, 1972]

AFFIDAVIT OF VICTORIA KEPPLER

STATE OF CALIFORNIA }
COUNTY OF ALAMEDA } ss.

I, VICTORIA KEPPLER, do hereby declare:

That I am a resident of the County of Alameda, City of Oakland, California and my address is 208 Modoc.

That I have two daughters, ages six (6) and eight (8).

My family and I applied for aid under the AFDC program on January 19, 1972 and receive \$235.00 per month.

That before going on aid my children attended the Chabot Public School near where we lived. One of my daughters has a hearing problem and had difficulty with school until she was enrolled at Chabot. Now she is getting special help and making excellent progress.

That because of an abrupt change in our living arrangement we were left without any income and without a place to live. This happened in the midst of the school term.

I was unable to find a decent place for my family to live within the Chabot School area, or even near it, that I could afford on the amount I get from welfare. We couldn't find a two-bedroom apartment for less than \$200.00 per month, which would leave us with only \$35.00 per month for all other needs like food and clothing.

I joined my family with another woman who is pregnant and on welfare. We found a house near the Chabot School that had room for all of us and that we could afford by combining our resources. The total rent is only \$275.00 per month including utilities. We are able to live in a clean and decent house, with bedrooms and living space for all of us, with an ability to share childcare, like baby-sitting, all for less money than if we lived separately.

The Alameda County Welfare department informed me in late January, 1972, that neither my family nor the family we share the house with will be able to get food stamps

because we're not a "household", since we're not "related" to one another.

If we were living separately from the other family we would be eligible for food stamps. We would be able to purchase \$88.00 worth of food for \$64.00.

My friend and her child would otherwise be eligible for food stamps also and could get \$60.00 of food stamps for \$48.00.

Now neither family is eligible for food stamps.

It is clear to me that it is much more economical for us to share a house, but now we are being punished for being thrifty.

Without food stamps we will have difficulty making ends meet.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: 2/8/72

/s/ Victoria Keppler
VICTORIA KEPPLER

[Title Omitted in Printing]

[Filed March 30, 1972]

AFFIDAVIT OF SHEILAH ANN HEJNY

STATE OF NORTH CAROLINA }
COUNTY OF FORSYTH }

Sheilah Ann Hejny, being duly sworn, deposes and says:

1. I am a plaintiff in this lawsuit. I am 25 years old and reside at Route 3, Kernersville, Forsyth County, North Carolina.

2. My household consists of six persons: myself, my husband, David Lee Hejny, age 27, my three children, Robert Wayne, age 5, Shirley Jo, age 3, Tracy Leigh, age 2 and Sharon Sharp, age 20. Sharon Sharp is not related by blood or affinity to any member of my family.

3. Up until September 7, 1971, my family was living in Dallas, Texas. We lived next door to the Sharp Family and became acquainted with Sharon. Sharon had been in a children's home since age 7, returning to her mother at age 18. She lived with her mother about six months and then she was told to leave home on November 21, 1970. My family took her in as we felt she had emotional problems caused by her mother's rejection and other factors which we could help by offering her a home.

4. Sharon immediately became a member of the family. She baby-sat for my children when the need arose, and helped with the cooking and cleaning. My husband and I treated her as a family member, sometimes buying clothes for her and other personal items.

5. On September 7, 1971, we all moved to Winston-Salem,** North Carolina. On November 1, 1971 my husband was employed by an Electrical Company in High Point, North Carolina and worked in the plumbing-pipe laying division. The amount of hours he put in depended upon the weather, and during the months of November, December and January, he worked only two or three days a week, receiving \$2.00 per hour.

** Winston-Salem and Kernersville are used interchangeably.

6. On January 24, 1972, my husband was transferred to Gaffney, South Carolina to lay pipe. His salary is \$2.50 per hour, and the amount of hours still depends upon the weather. Since January 24th, he has not been able to put in a full week's work. He comes home on Saturday in a company truck and returns to South Carolina the next day.

During the latter part of January, our family received emergency food donations from churches and a health nurse suggested I apply for food stamps.

7. On or about the 1st of February, 1972, I applied for food stamps at the Forsyth County Department of Social Services. A week later, I started to participate in the program, spending \$14.00 per month for a monthly coupon allotment of \$144.00.

8. During the month of February, 1972, our family income was as follows:

a. My husband brought home about \$90.00 per week.

b. Sharon Sharp earned about \$20.00 per month babysitting for neighbors in the trailer park where we live.

c. I have not worked since coming to Winston-Salem because of the reason set forth in paragraph number 11.

9. During February of 1972, Sharon continued to be an integral part of our family, helping with the cooking, cleaning, babysitting for me when necessary and contributing her outside baby sitting earnings to our household expenses. I have not pushed her to get a job since I feel her continuing emotional problems prevent her from becoming gainfully employed on any permanent basis. Instead I am urging her to attend the local mental health clinic.

10. Since arriving in Winston-Salem, and in particular during the month of February, our family expenses were as follows:

a. Rent—\$38.50 per week—this amount includes lights, gas and water and is for a furnished trailer.

For the past several weeks, our landlord has required us to pay \$70.00 per week for rent as we had become over \$200.00 behind. We are now \$170.00 behind. (When my husband returns to his job on Sundays, he thus takes no money with him.)

b. We have no car, no telephone.

11. Our family financial condition is further worsened by the following medical problems:

a. Robert, age 5, has bronchial asthma. At present he is receiving free treatment from the County Health Department.

b. My daughter, Tracy, was born February 9, 1970 with an open spine (meningocele). A week after birth she was operated on to remove a pouch of spinal fluid. This operation cost \$6,000. The March of Dimes and our own efforts have reduced the present amount owing to \$500.00.

i. Three months later, Tracy was hospitalized for pneumonia—cost \$1,000.00—present amount owing \$600.00.

ii. Six months later, Tracy turned blue from the waist down and the total bill, including cast-braces, was \$600.00. We presently owe \$300.00.

iii. Since coming to Winston-Salem, Tracy has been seen frequently by the County Health Department at no expense. On February 21, 1972, however, the clinic doctor referred her to a private hospital for neurological tests and a ears, nose and throat examination. She recently has been experiencing a constant nose bleed. We will have to assume these costs.

My concern for Tracy and the time necessary to care for her have delayed my plans to find a job; because of Tracy's condition, she is highly susceptible to disease.

c. On June 8, 1971, I had my gall bladder removed—cost \$1,000.00 amount owing \$800.00. In January of 1972, I had a tubal ligation financed by Family Planning. During both these occasions, Sharon assumed the major responsibility for the household duties and care of my children. Sharon has also provided necessary baby-sitting services while I have had to take my children for clinic visits.

d. My husband has an hereditary tumor disease, Von Ricklinhouser, (aortic insufficiency). The tumor was removed in 1964. My husband is not disabled because of this condition, but we expect problems to reoccur. My husband also has a heart valve that leaks, requiring his heart to work faster. In 1967, he was advised by a doctor to seek surgery, but no operation is contemplated at the present time.

e. Since coming to Winston-Salem, I have not been able to pay anything on the medical bills listed above, and continue to receive letters requesting payments.

12. On or about February 24, 1972, we received a letter

from the Forsyth County Department of Social Services requesting that we come into the office so our eligibility for March could be reviewed. As we had no transportation, on or about February 28, 1972 a caseworker came out, and after examining our situation, informed us we were no longer eligible for participation in the foodstamp program because of Sharon's presence in our home. We have received no written notice concerning the termination of our benefits, and have not received any food stamps for March.

13. The loss of food stamps has created a financial crisis in our household. At present our net weekly income is roughly \$25.00. Sharon's realization that she is "responsible" for our no longer receiving benefits is adversely affecting her emotional health. I do not see how I can give my children, especially Tracy, the medical care they need.

14. If the new food stamp regulations allowed unrelated households to be eligible for food stamps, I would be in a position to provide my "family" with the basic necessities of life. Given expenses and deductions, our purchase requirement would have remained very low, and my family could have benefited greatly from the program. Based upon our February, 1972 certification, our family could have continued to pay only \$14.00 for \$144.00 worth of stamps.

Inscribed and sworn to before me this the 7th day of March, 1972.

/s/ Sheilah Ann Hejny
Affiant, SHEILAH ANN HEJNY

/s/ Vernal B. Gaston
Notary Public

My Commission Expires:
December 13, 1975

[Title Omitted in Printing]

[Filed March 30, 1972]

AFFIDAVIT OF DAVID S. DURRANT

STATE OF UTAH }
COUNTY OF SALT LAKE }

DAVID S. DURRANT, being first duly sworn, upon oath, deposes and says:

1. I am a plaintiff in this lawsuit. I am 19 years old and reside at 84 "N" Street, Salt Lake City, Utah.

2. My household consists of two persons: David A. Kilmer and myself. We are not related individuals. I am 19 years of age and David A. Kilmer is 28 years of age.

3. Both David A. Kilmer and myself receive a minimum monthly income which would be insufficient for us to live upon in separate households. We chose to share one household in order to minimize our costs of living. We share the cost of rent, food, utilities, laundry and other household items and share the use of these items as well as using common kitchen facilities. I have found this arrangement to be economically and socially beneficial.

4. My income for the month of January, 1972, was approximately \$100.00, which I earned doing odd jobs such as household repairs and remodeling in and about the Salt Lake City area.

5. David A. Kilmer had an income of approximately \$70.00 per month which he earned doing odd jobs such as household repairs and remodeling in or about Salt Lake City during the month of January, 1972.

6. The anticipated total monthly expenses of our household for February, 1972, would have been approximately \$200.00:

rent	\$100
gas, water and	
sewer	40
electricity	5

laundry	5
transportation (oil & gas)	20
food	30
Total	200

In addition to these expenditures, we have costs for clothing, hygienic needs, and other personal incidentals.

7. I am a student at the University of Utah, being sent to that Institution to study by the Office of Rehabilitative Services as part of a rehabilitation program. In order to transport myself to school, I use an automobile, as there is limited public transportation available in the Salt Lake area and such public transportation as exists costs 50 cents to ride one way. My car is currently in bad mechanical condition, as it is in need of replacement tires and in the last month, I have had to replace the brake shoes, brake linings, brake seals, and transmission seals.

8. We have barely been able to meet our monthly living expenses. In order to meet our expenses, we have always cut out food. We know that on the monthly coupon allotments of food stamps put out by the Utah State Division of Family Services, based on our January income, for \$42.00, we could have purchased \$60.00 worth of food stamps, or for \$31.50, we could have purchased \$45.00 worth of food stamps, which would have allowed us to have lived much less marginally and provided us with a more adequate diet.

9. On or about January 10, 1972, David A. Kilmer and myself applied for food stamps, but were refused food stamp coupons by the Utah State Division of Family Services. This refusal, I was informed, was because the household of David A. Kilmer and myself was determined to be a household composed of unrelated individuals and therefore, we were not eligible and our application was denied. We appealed this denial and requested a fair hearing. This hearing was held on February 14, 1972, and the decision to deny food stamps was affirmed by the Order of the Hearing Examiner, who stated:

"Division regulations as listed in Vol. III, Section 2752.3 and U.S.D.A. regulations prohibit the issuance of food stamps on a strictly individual basis and to persons who are living together who are not related."

(a copy of which decision is attached hereto and marked as Exhibit A.)

10. The denial of food stamps seriously affects our household. We are unable to meet the high cost of living and still permit me to continue in school. Unless we buy less clothing or food for our household, we would be burdened with additional expenses that we cannot afford, if we hope to maintain a poor but healthy household.

11. If the new Food Stamp statute and regulations requiring that a food stamp household contain only related individuals were not in effect, our household would benefit from food stamps. As a two-member household under Table VI of Vol. III, Assistance Payments Manual of the Policy Manual of the Utah State Division of Family Services, Monthly Coupon Allotments and Variable Issuance Purchase Requirements, with an income of \$170 to \$189.00, we would be, for the purchase price of \$42.00, permitted to buy \$60.00 worth of food coupons, thereby saving \$18.00, which would permit our unbalanced budget to come more nearly into balance and permit me to continue in school and live for the limited period of time during which time I am in school as part of a rehabilitation effort to permit me to become a self-supporting contributing member of society.

12. Under the provisions of Table II of Vol. III, Assistance Payments Manual of the Policy Manual of the Utah State Division of Family Services, which contains the standard budget or needs budget for the State of Utah, if I were living by myself, I would require for a decent standard of living the sum of \$153.00 per month and would receive, if I applied for it, a welfare grant of \$12.00 per month, as the maximum grant paid by the State of Utah for a single person is \$112.00. For our two-person household, the need as set forth in the needs budget is \$205.00.

/s/ David S. Durrant
DAVID S. DURRANT

Subscribed and sworn to before me this 9 day of March, 1972.

/s/ Jackie T. McCann
Notary Public
Residing at Salt Lake City, Utah

My Commission Expires:
1/15/75

BOARD OF FAMILY SERVICES OF THE STATE OF UTAH

**FAIR HEARING IN THE
INTEREST OF**

**DAVID DURRANT
DAVID KILMER**

Hearing Order

The above entitled matter having been regularly heard before the hearing examiner of the Utah State Division of Family Services and proper notice having been given the claimant, and all of the facts, circumstances, and rights of the claimant having been duly considered by the State Board of The Division of Family Services:

NOW THEREFORE IT IS ORDERED:

1. The decision by the Region III office to deny the claimant's application for food stamps on the basis that two unrelated persons live together is hereby sustained.
2. Division regulations as listed in Vol. III Section 2752.3 and USDA regulations prohibit the issuance of food stamps on a strictly individual basis and to persons living together who are not related.
3. This decision shall be reviewed by the State Board of the Division of Family Services and may be appealed by writing to the Board at 231 East Fourth South, Salt Lake City, Utah 84111, within 30 days.

It is further ordered that a copy of this order be served upon the claimant by mailing thereof to him/her at his/her last known address, certified mail, return receipt requested. Dated this 14th day of February 1972.

BOARD OF FAMILY SERVICES

/s/ Richard Fowler

By: RICHARD FOWLER

Hearing Examiner

EXHIBIT A

(a copy of which decision is attached hereto and marked as Exhibit A.)

10. The denial of food stamps seriously affects our household. We are unable to meet the high cost of living and still permit me to continue in school. Unless we buy less clothing or food for our household, we would be burdened with additional expenses that we cannot afford, if we hope to maintain a poor but healthy household.

11. If the new Food Stamp statute and regulations requiring that a food stamp household contain only related individuals were not in effect, our household would benefit from food stamps. As a two-member household under Table VI of Vol. III, Assistance Payments Manual of the Policy Manual of the Utah State Division of Family Services, Monthly Coupon Allotments and Variable Issuance Purchase Requirements, with an income of \$170 to \$189.00, we would be, for the purchase price of \$42.00, permitted to buy \$60.00 worth of food coupons, thereby saving \$18.00, which would permit our unbalanced budget to come more nearly into balance and permit me to continue in school and live for the limited period of time during which time I am in school as part of a rehabilitation effort to permit me to become a self-supporting contributing member of society.

12. Under the provisions of Table II of Vol. III, Assistance Payments Manual of the Policy Manual of the Utah State Division of Family Services, which contains the standard budget or needs budget for the State of Utah, if I were living by myself, I would require for a decent standard of living the sum of \$153.00 per month and would receive, if I applied for it, a welfare grant of \$12.00 per month, as the maximum grant paid by the State of Utah for a single person is \$112.00. For our two-person household, the need as set forth in the needs budget is \$205.00.

/s/ David S. Durrant

DAVID S. DURRANT

Subscribed and sworn to before me this 9 day of March, 1972.

/s/ Jackie T. McCann

Notary Public

Residing at Salt Lake City, Utah

My Commission Expires:

1/15/75

BOARD OF FAMILY SERVICES OF THE STATE OF UTAH

**FAIR HEARING IN THE
INTEREST OF
DAVID DURRANT
DAVID KILMER**

Hearing Order

The above entitled matter having been regularly heard before the hearing examiner of the Utah State Division of Family Services and proper notice having been given the claimant, and all of the facts, circumstances, and rights of the claimant having been duly considered by the State Board of The Division of Family Services:

NOW THEREFORE IT IS ORDERED:

1. The decision by the Region III office to deny the claimant's application for food stamps on the basis that two unrelated persons live together is hereby sustained.
2. Division regulations as listed in Vol. III Section 2752.3 and USDA regulations prohibit the issuance of food stamps on a strictly individual basis and to persons living together who are not related.
3. This decision shall be reviewed by the State Board of the Division of Family Services and may be appealed by writing to the Board at 231 East Fourth South, Salt Lake City, Utah 84111, within 30 days.

It is further ordered that a copy of this order be served upon the claimant by mailing thereof to him/her at his/her last known address, certified mail, return receipt requested. Dated this 14th day of February 1972.

BOARD OF FAMILY SERVICES

/s/ Richard Fowler

By: RICHARD FOWLER

Hearing Examiner

EXHIBIT A

Hearing held February 11, 1972, Salt Lake City, Utah
Decision dated February 14, 1972
Richard Fowler, Hearing Examiner

I. CLAIMANT'S PETITION:

The claimant requested the hearing to appeal a decision by the Region III office to deny his application for food stamps on the basis that he is living with a non-related person. The claimant pays an equal share of the costs of rent, utilities and food and states that food is prepared in common. He is residing with a friend in order to meet expenses while attending school. His tuition is met by the Office of Rehabilitation Services and the other member of the household is receiving on-the-job training under the G.I. Bill. The two persons are not related.

The claimants stated that they should not be denied food stamps due to the fact that there is a severe housing shortage in the Salt Lake City area and it is physically impossible for all persons in the community to have individual housing. In addition, both persons are attending school or job training at government expense. If the Federal and State Governments see fit to subsidize their training it would seem that the USDA is working at cross-purposes by seeking to prevent them from succeeding by denying food stamps. They stated that the USDA should define a commune as being a large group of people and not pass rules to limit food-stamps participation by small groups. They protest also the rule that stamps are issued on a household basis. Non-related persons with income should not be obliged to support persons with little or no income simply because they share living quarters.

II. REGIONAL OFFICE RESPONSE:

The representatives of the Region III office stated that the application was denied due to the fact that the two applicants were not related and were sharing common living quarters.

III. FINDINGS OF FACT:

Division regulations as listed in Vol. III Section 2752.3 and USDA regulations prohibit the issuance of food stamps

on a strictly individual basis and to persons living together who are not related.

IV. DECISION:

The decision by the Region III office to deny the claimant's application for food stamps on the basis that two unrelated persons live together is hereby sustained.

[Title Omitted in Printing]

[Filed March 30, 1972]

Michael Hoffman, David McElyea, Deborah Jirel, Deborah Small and Michael Gaddy, being duly sworn, depose and say:

1. That they are plaintiffs in the above-captioned lawsuit. They make this affidavit upon their own knowledge, and each of them swears to those statements which pertain particularly to him and to those statements which pertain to the group as a whole.

2. The five affiants live together, as a household, at 727 Sims Street, Columbia, South Carolina.

3. Michael Gaddy is 24 years of age; Michael Hoffman is 20; Deborah Jirel is 18; Deborah Small is 18 and David McElyea is 17.

4. Deborah Jirel left her parents' home in St. Andrews, South Carolina, in June, 1971, following a long history of family discord. This discord centered around what Deborah believes to be her parents' inability to comprehend and tolerate her views on politics, economics and race. This lack of understanding resulted in an incompatible family situation which forced her to leave home. Deborah visits her parents about twice a month. Her parents have never offered, nor has Deborah asked for, financial assistance. On or about January 7, 1972, Deborah left her job as a food-preparer with a large, nationwide take-out food chain, because, when she asked permission to leave work due to illness, she was told that, if she left, she would be fired. Rather than be fired, she quit. She is presently seeking employment through the Youth Opportunity Center of Columbia, South Carolina.

5. Michael Hoffman left his parents' home in Marietta, Georgia, between three and four years ago. Michael has been declared an emancipated minor by the courts of the State of Georgia. He was asked to leave the family home by his mother. Michael's father died subsequent to his leaving home, and for that reason Michael's mother has never offered to support him, nor has he asked for any such help. Michael now converses with his mother by telephone

about once a month. Michael was asked to leave home because of family discord. This discord involved Michael's political, social and racial beliefs which his parents could neither understand nor accept. This friction resulted in an incompatible family situation and was the reason for his being asked to leave home. Michael is unemployed but is looking for work through the Youth Opportunity Center of Columbia, South Carolina, in addition to looking for work independent of that organization.

6. Deborah Small was asked to leave her mother's home in Brewer, Maine, in or about March, 1971. Her mother has never asked her to return, even though Deborah writes to her mother about once a month. Deborah's mother is divorced and is unable to send money for Deborah's support; Deborah has not asked her mother to support her since the family tie was severed. Deborah last worked on or about January 10, 1972. She was forced to quit her job when, having asked permission to leave her job for a short time in order to see her attorney, permission was denied. She quit because she was informed by her supervisor that, if she insisted upon leaving to see her attorney, she would be fired. Deborah is also currently seeking employment.

7. David McElyea left his parents' home in the Columbia area about mid-December, 1971. His parents never objected to his leaving, nor have they ever asked him to return. David has never been offered support by his parents since his leaving their home, nor has he asked for any such support. David last worked on or about January 10, 1972, when he quit his job as a cook. He was forced to quit because of constant harrassment from his supervisor. David believed that this harrassment was totally unjustified in that he felt that he was a good employee, with a good record, and an employee who gave every indication of enjoying his work. He is presently seeking employment and has been promised a position with a local textile firm if, and when, an opening occurs.

8. Michael Gaddy is a full-time student at the University of South Carolina and is majoring in music. Michael served in the United States Army, saw duty in Viet Nam and was honorably discharged in October, 1969. Neither his mother nor his father is financially able to provide money for his

support or education. He has never asked his parents for any such financial assistance.

9. The five affiants established a household in or about mid-December, 1971. They established this household for economic reasons—they could reduce expenses by living as a unit—and because of a personal affinity each for the other.

10. Although unrelated by either blood or marriage, affiants consider themselves to be a family unit. Because of their experiences with their respective natural families, affiants have endeavored to establish a family unit which affords the same kind of security, stability and protection as a biological family provides to its members. Affiants share all expenses. If one member of the unit is employed, such member would feel obliged to provide food, shelter, medical care and other necessities for the other members. When one member pays the monthly rent, for example, he does not seek, or expect, reimbursement. In fact when Michael Gaddy applied for admission to the University of South Carolina, he did not have sufficient funds to cover the cost of tuition, books and other expenses. The other members of the family contributed funds for these costs. None of the affiants wants or expects to be reimbursed. These funds were given out of a sense of affinity, or love, in order to help a family member attain what he desired. While expenses are shared, if one member has no money to contribute, he is not ostracized; there is no resentment. Witness to this is the fact that neither Michael Hoffman nor Michael Gaddy has worked since the formation of the family, and have, therefore, been unable to contribute equally with the other members, but who have, nevertheless, never been asked to leave or to obtain a job as a condition of family membership.

11. What affiants wish to stress most to this Court is that the relationship amongst the affiants is far deeper and stronger than the bonds between friends or between mere roommates and that affiants consider themselves a family, not merely for the purposes of this lawsuit, but for *all* purposes.

12. On or about January 12, 1972, affiants applied for food stamps at the Richland County (South Carolina) Food Stamp Office, as a household. Their application was denied solely because they were not related by either blood or marriage.

13. Affiants meet all other eligibility criteria: they have no income, are willing to work and are in need of assistance. Affiants' monthly expenses are as follows:

Rent	\$75
Food	\$120
Utility	\$34
Telephone	\$14
Laundry	\$10
Car	\$30

14. Affiants believe that the basis for denying them food stamps is discriminatory and violates their fundamental rights of freedom of association and freedom of expression.

15. Affiants have been informed by their attorneys, and believe, that each of them would be entitled to \$32 worth of food stamps per month and would have to pay nothing for these stamps if each affiant lived alone. Affiants have been similarly informed that, if they were related by blood or marriage, they would be entitled to \$128 worth of food stamps per month and would have to pay nothing for these stamps.

16. The denial of food stamps to persons in the same situation as the affiants means that such persons must deny themselves food and other items necessary to sustain life. The denial of food stamps to the affiants has placed them in an extremely precarious economic position. They have no income and have been forced to feed themselves and obtain other necessities through the generosity of neighbors and other friends.

/s/ Michael Hoffman
MICHAEL HOFFMAN

/s/ Michael Gaddy
MICHAEL GADDY

/s/ Deborah Jirel
DEBORAH JIREL

/s/ Deborah Small
DEBORAH SMALL

/s/ David McElyea
DAVID MCELYEA

Sworn to before me this 27th day of January, 1972.

/s/ Paula M. Macmillan (L.S.)

Notary Public for South Carolina

My Commission Expires: (11-17-79)

APPENDIX "A"

[to Memorandum of Law filed March 30, 1972]

STATE OF CALIFORNIA—HUMAN RELATIONS AGENCY

DEPARTMENT OF SOCIAL WELFARE

744 P Street

Sacramento 95814

November 15, 1971

Mr. Kenneth Schlossberg, Staff Director
Select Committee on Nutrition and Human Needs
Senate Annex
Washington, D. C. 20510

Dear Mr. Schlossberg:

This will reply to your November 9, 1971, telegram requesting a report on the Food Stamp Program. Our response will follow the same sequence as your questions.

When will new Plans of Operation be implemented?

The following time schedule has been set for implementing our new Plan of Operation by all California food stamp counties:

To implement no later than January 1, 1972

- a. The new purchase requirements and allotment schedule for all certified households and new cases.
- b. The new eligibility requirements for all new applicants, applying to recertifications as due subsequent to January 1, 1972, completing recertification of entire caseload by May 1, 1972.

To implement no later than April 1, 1972

- a. Public Assistance Withholding method of stamp payment.
- b. Variable Purchase requirements.

To implement no later than February 1, 1973

All other changes in the new Plan of Operation, including Quality Control and Outreach services.

Have you instituted new eligibility levels yet?

Subject to Food and Nutrition Service approval, all new eligibility standards and requirements have been instituted in our state's Food Stamp Manual of Program Policies, and will be effective January 1, 1972.

What do you expect to be the effective participation of the new levels? How many and what kind of persons will be brought into the program? How many and what kind of persons will be eliminated from the program?

There is no way to judge numbers effectively, but a small number of households will be made eligible for food stamps with the increase in the maximum adjusted income limits for households of four or more. This number may be balanced by the households made ineligible by the same new limits in the one to three person households. In addition, fewer items are considered as hardships deductions, which means that a given household's adjusted income may be higher under the new regulations. There is no large, recognizable group which will become eligible under the new regulations.

The "related household" limitations will eliminate many households from eligibility in the Food Stamp Program. It is my understanding that the Congressional intent of the new regulations are specifically aimed at the "hippies" and "hippie communes". Most people in this category can and will alter their living arrangements in order to remain eligible for food stamps. However, the AFDC mothers who try to raise their standard of living by sharing housing will be affected. They will not be able to utilize the altered living patterns in order to continue to be eligible without giving up their advantage of shared housing costs.

In California it is a common practice for the very poor to "move in" with friends during unemployment, or any type of crisis. Many of the migrant labor camps are so constructed that the people living there cannot be eligible on the basis of "related household". This section will eliminate a segment of the migrant workers who by definition are to be eligible for food stamps. We have found no way to "interpret" so these migrants in this type of camp can be eligible.

What other aspects of the new regulations as developed in your state's plan affect participation in the program?

Although the new basis of coupon issuance will slightly increase food stamp bonus values for participant households at the extremely low net income levels, it will more significantly decrease values and purchasing power of the still larger group of participant households in California who will fall within net income levels ranging from \$130 monthly and up for single person households to \$570 monthly and up for the 10-person households. The increased purchase requirements for these households (which include a high percentage of public assistance recipients), without a proportionate increase in their total stamp allotments, will adversely affect their program benefits by a progressive increase in loss of bonus values ranging from \$2 to \$4 for single person households, to from \$37 to \$39 for a 10-person household.

In addition to the loss of program benefits for these households, their subjection to a far more complicated and detailed application process will undoubtedly serve to further deter them from food stamp participation, particularly those at the maximum purchase requirement levels who stand to gain a monthly bonus benefit of only \$6 for the one and two person households and \$9 for the three and more person households.

The "tax dependent" restriction will eliminate many of the college students who now receive food stamps, and a sizeable percentage of the young AFDC families. There is no leeway for the legitimately emancipated minor who meets financial misfortune, whether married or single. It appears reasonable to exclude that person during the year he is being claimed as a tax dependent by another household, but being excluded for the year thereafter seems unreasonable.

I suggest the law should specifically exclude that college student who is receiving over half his support from a person outside his household (a student being supported by a parent living elsewhere) who can legally claim the student as a dependent. The exclusion should continue until the student no longer receives over half his support in such a manner.

How serious a problem is funding for your state and what effect will increased administrative costs have on your ability to operate the program?

Counties are considering the increased cost of administration very carefully. Several counties have indicated that they are weighing the possibilities of changing from food stamp to commodities, or of having no supplemental food program. New counties, just accepted and not yet operating, may re-evaluate their decision to come into this program.

Increased administrative costs include:

- a. There is new federal reimbursement available for Fair Hearing officers, but no such reimbursement for county expenses in handling Fair Hearing problems. The larger counties who have one specific person handling Fair Hearings may be able to claim reimbursement, but not the small county who assigns this duty to an administrator as a supplemental duty. The Fair Hearings are expected to increase sharply since the new regulations also allow retroactive adjustments.
- b. The new work registration will require considerable additional paperwork by each certification worker. While this is reimbursable at 62½%, the county will have to carry the remaining 37½%.
- c. The "fixed basis" of income used in all OAS cases in one or two person households can no longer be used. Each of these budgets must now be computed individually. As above, the county must carry 37½% of this increased cost.

Counties are having the same difficulties in funding as other governmental jurisdictions. This expanded cost will not bring a greater income to the county. At this time, the applicant pays an average of 50¢ for every \$1 of food stamps issued. This is bringing income into the community at the rate of 50¢ per \$1 issued. But the county costs must be weighed against this increased community income. At the time that counties determine the cost of issuing stamps is equal to or above the increased monies brought in, then they must re-evaluate the benefits of the program to the

county. We may now have reached this point of re-evaluation.

"The Select Committee Would Appreciate Any Information You Can Provide Regarding Your Reaction to the New Regulations, Your Efforts to Implement and Make Them Workable, Your Discussions with the Department of Agriculture on the New Regulations, and Your View of Future Operations of the Food Stamp Program"

The department's reaction to the new regulations is similar to that of the other western states—mixed. The regulations seem to reflect a conflict of Congressional philosophy. Some elements such as the work registration and tax dependency requirements appear restrictive, while others such as Public Assistance Withholding and the Variable Purchase features provide more flexibility in the program. Also, this state has formerly been able to negotiate with Food and Nutrition Service on the interpretation of federal regulations. Now Food and Nutrition Service mandates the use of their own wording in the FNS Instruction 732-1.

The concept of national uniform policy for eligibility and certification is sound in theory. However, in day to day operations, uniform wording does not work for all of the states. The interpretation of rules for eligibility in California should not be the same as for the small southern rural states. The United States Department of Agriculture, however, does not provide for any flexibility for the states in the wording and interpretation of the regulations.

Lack of negotiation between FNS and a state like California causes hardship to the 36 counties responsible in our state for administering the program on a day to day basis. The continuing writing of FNS regulations without consistency between the Food Stamp Act and the Public Assistance titles of the Social Security Act, creates administrative problems and costs for county government. By some coordinative effort at the Congressional level, simplified provisions could take place which would result in a realistic approach to uniform income and resource standards.

As you can see in the attached letter, we have asked for a meeting with Mr. James Springfield, USDA Director, Food

Stamp Program, to discuss and hopefully resolve some of the issues we have raised with the USDA. It will be interesting to see how the USDA responds to our request.

With respect to the future of the program, we see the administrative costs of operating the program at the local level ever increasing. With the county fiscal situations as they are, I believe we are at the point where some counties are not able to absorb these increasing costs. Should the administrative costs continue to rise, it could mean some counties withdrawing from the Food Stamp Program and reverting to the Commodities program, particularly unless FNS enforces the same eligibility requirements for both programs. It is also conceivable that some counties might withdraw from the Food Stamp Program and not enter into the Commodities program. I believe administrative costs could be lowered by making the Food Stamp Program regulations the same as those of Public Assistance.

Thank you for giving us an opportunity to comment on the new food stamp regulations. If I can provide any additional comments or further clarification on any of these items, please let me know.

Sincerely,

/s/ Robert B. Carleson,
Director of Social Welfare
[illegible]

Deputy Director, Administration

[Title Omitted in Printing]

[Filed April 5, 1972]

DISTRICT OF COLUMBIA }
WASHINGTON, D. C. }

Edward J. Hekman, being first duly sworn on oath, deposes and says that:

1. I am Administrator of the Food and Nutrition Service of the United States Department of Agriculture. Under the general direction of the Assistant Secretary of Agriculture for Marketing and Consumer Services, I am responsible for the administration of the Food Stamp Program.

2. The purpose of this affidavit is to show that the issuance of a temporary restraining order in this case would have the effect of substantially changing existing criteria of eligibility for participation in the Food Stamp Program. Contentions similar to those of the plaintiffs were given full administrative consideration and were not adopted as more fully set forth in the statement of the Assistant Secretary of Agriculture for Marketing and Consumer Services which was published in the Federal Register on October 16, 1971 (36 F.R. 20145). The regulations of which plaintiffs now complain became effective on July 29, 1971, over eight months ago, and have been implemented in all but three states—none of which three is a state of residence of any of the plaintiffs.

3. On April 16, 1971, there was published in the Federal Register (36 F.R. 7240) a notice of proposed rule making which invited the comments, suggestions, or objections of interested persons with respect to the proposed revision of the regulations governing the Food Stamp Program. The revision of the regulations was necessitated by the amendments to the Food Stamp Act of 1964 (7 U.S.C. 2011-2025) which were enacted by Public Law 91-671 (84 Stat. 2048), approved January 11, 1971. Among those amendments was the amendment in issue which modified the statutory definition of "household" limiting it to "a group of related individuals . . . or nonrelated individuals over age 60. . . ." Thus, the proposed regulations included language to effectuate this change in the enabling legislation by making ineligi-

ble for the program any household in which all of the members were less than 60 years old and were not related to each other.

4. Numerous comments concerning this proposal were received. However, it was concluded that in order to carry out the intent of the legislation, the regulation to be promulgated would have to be substantially in the form of that issued on July 29, 1971. Any method of handling groups of persons who were living together and were under 60 years of age on any basis other than that prescribed in the regulations could well result in the eligibility for the program of communal households which clearly the Congress intended to exclude from participation in the program.

5. Since publication of the revised program regulations on July 29, 1971, the Food and Nutrition Service has worked diligently, along with the agencies of the several States responsible for the administration of the program in such States to implement the various program changes, including the revised eligibility standards, required by the 1971 amendments to the Food Stamp Act of 1964. Some of the States implemented the revised eligibility standards as long ago as November 1971. All but three of the States participating in the program have now put such standards into effect. The attached Exhibit 1 shows the status of each State in this respect.

6. The change challenged here is only one of a number of changes in the program which have been made by nearly all of the participating States to bring program operations into conformance with the substantially amended statute and revised regulations. The issuance of a Temporary Restraining Order would disrupt the orderly local administration of the program in each of the States involved without there having been any consideration of the merits of the litigation.

/s/ Edward J. Heckman
Administrator

Subscribed and sworn to before me a Notary Public in and for the District of Columbia this 4th day of April, 1972.

/s/ Donneta S. Dorsey
Notary Public
District of Columbia

My Commission Expires April 30, 1974

[Title Omitted in Printing]

[Filed April 5, 1972]

DISTRICT OF COLUMBIA }
WASHINGTON, D. C. }

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/s/ Edward J. Heckman
Administrator

Subscribed and sworn to before me a Notary Public in and for the District of Columbia this 4th day of April, 1972.

/s/ Donnetta S. Dorsey
Notary Public
District of Columbia

My Commission Expires April 30, 1974

**Schedule of Implementation of Revised
Eligibility Requirements by State Agencies**

STATE	DATE
Alabama	April 1972
Alaska	January 1972
Arizona	January 1972
Arkansas	January 1972
California *	January 1972
Colorado	December 1971
Connecticut	Proposed May 1972
District of Columbia	March 1972
Florida	December 1971
Georgia	January 1972
Hawaii	December 1971
Idaho	April 1972
Illinois	April 1972
Indiana	February 1972
Iowa	March 1972
Kansas	February 1972
Kentucky	March 1972
Louisiana	January 1972
Maine	January 1972
Maryland	January 1972
Massachusetts	April 1972
Michigan	April 1972
Minnesota	April 1972
Mississippi	January 1972
Missouri	March 1972
Montana	January 1972
Nebraska	December 1971
New Jersey	April 1972
New Mexico	April 1972
New York	April 1972
North Carolina	March 1972
North Dakota	January 1972
Ohio	April 1972
Oregon	Proposed May 1972
Pennsylvania	March 1972
Rhode Island	April 1972
South Carolina	January 1972
South Dakota	November 1971

STATE

DATE

Tennessee

January 1972

Texas

April 1972

Utah

December 1971

Vermont

Proposed May 1972

Virginia

January 1972

Washington

April 1972

West Virginia

November 1971

Wisconsin

December 1971

Wyoming

March 1972

* Some California counties began implementation in January; statewide implementation was completed by April 1, 1972.

By Lammie Patterson, Deputy Clerk
James F. Davey, Clerk
approved and filed 4-8-1972
Liberation of bill for \$1.00 cash
information
April 8, 1972
10:45 A.M.
A True Copy
James F. Davey, Clerk
Lammie Patterson
Deputy Clerk

United States District Judge
J. Lewis Smith, Jr.

This order shall remain in effect until a hearing and
determination by the three-judge court.
This Order is entered upon the docket.
That the United States Marshal shall serve a copy of
the amount of or security equivalent to One (\$1.00)
Dollars
have been wrongfully or unlawfully retained herein, a
damages or may be suffered by any party who is found to
That plaintiff file a bond for the payment of costs and
"unrelated household" provision.
be a provision in effect prior to the implementation of the
shall be accomplished on the same household basis as had
that unrelated people reside in a household. Certainly
that persons shall not be denied food stamps on the basis
That the defendant shall immediately inform the State
bonds are not related to householders.
that all members of plaintiff's and other persons' households
in which everyone is not related to one another on the basis
and all other unrelated persons residing in households
unrelated to be denied food stamps.

10
[Filed April 6, 1972]

James F. Davey, *Clerk*

[Title Omitted in Printing]

TEMPORARY RESTRAINING ORDER

After reading the complaint, affidavits and memorandum of law, the Court, pursuant to 28 U.S.C. § 2284(3), **ORDERS AND DIRECTS:**

That the defendants, their agents, employees and successors in office, are temporarily enjoined from denying, or causing to be denied, food stamp eligibility to the plaintiffs, and all other impoverished persons residing in households in which everyone is not related to one another, on the basis that all members in plaintiffs' and other persons' households are not related to one another.

That the defendants shall immediately inform the States that persons shall not be denied food stamps on the basis that unrelated people reside in a household. Certification shall be accomplished on the same household basis as had been previously in effect prior to the implementation of the "unrelated household" provision.

That plaintiffs file a bond for the payment of costs and damages as may be suffered by any party who is found to have been wrongfully or unlawfully restrained herein, in the amount of, or security equivalent to, One (\$1.00) Dollar.

That the United States Marshall shall serve a copy of this Order forthwith upon the defendants.

This order shall remain in effect until a hearing and determination by the three-judge court.

/s/ Jno. Lewis Smith, Jr.

United States District Judge

10:45 A.M.
April 6, 1972

A True Copy
James F. Davey, *Clerk*
By Lemiel Patterson
Deputy Clerk

Injunction
Undertaking of pltf for \$1.00 cash
approved and filed 4-6 1972
James F. Davey, *Clerk*
By Lemiel Patterson, *Deputy Clerk*

[Title Omitted in Printing]

[Filed April 14, 1972]

**MOTION TO DISMISS OR IN THE
ALTERNATIVE FOR SUMMARY JUDGMENT**

COMES NOW the defendants by their attorneys, the undersigned attorneys and respectfully moves this court to dismiss this action or in the Alternative for Summary Judgment on the grounds that there is no genuine issue as to any material fact and defendants are entitled to judgment as a matter of law.

In support of this motion, the court is respectfully referred to the affidavit of Edward J. Heckman, previously filed in this case, which is incorporated herein and made a part hereof together with defendants' Memorandum of Points and Authorities in support of defendants' Motion to Dismiss or in the Alternative for Summary Judgment.

Respectfully submitted,

/s/

L. PATRICK GRAY, III
Assistant Attorney General

/s/

HAROLD H. TITUS, JR.
United States Attorney

/s/

HARLAND F. LEATHERS

/s/

PETER J. P. BRICKFIELD
Attorneys
Department of Justice

[Title Omitted in Printing]

[Filed April 14, 1972]

**STATEMENT OF MATERIAL FACTS AS TO WHICH DEFENDANTS'
CONTEND THERE IS NO GENUINE ISSUE**

1. The Food Stamp Act (7 U.S.C. 2011 *et seq.*) of 1964 establish the Food Stamp Program to permit those households with low incomes to receive a greater share of the Nation's food abundance.

2. Eligibility for food stamps is and always has been on a "household" basis.

3. On January 11, 1971, the definition of "household" within the meaning of the Food Stamp Program was changed by statute. The new definition defined a household as being *inter alia* "a group of related individuals."

4. On July 1971, regulations were promulgated which implemented the new definition of household. These regulations have been implemented in all but three states.

5. Contentions such as those put forth by plaintiffs herein with respect to the regulations were given administrative consideration but not adopted because the Department of Agriculture determined that the handling of groups of individuals who were living together and under 60 on any basis other than those proscribed in the regulation would be contra to the amendments in that it would result in eligibility for communal households.

6. Plaintiffs allege that they are groups of individuals who are needy and reside in Florida, California, North Carolina, South Carolina and Utah.

7. Defendants are the Department of Agriculture and the officials thereof who are currently responsible for the administration of the Food Stamp Program.

Respectfully submitted,

/s/

L. PATRICK GRAY, III

Assistant Attorney General

/s/

HAROLD H. TITUS, JR.

United States Attorney

/s/

HARLAND F. LEATHERS

/s/

PETER J. P. BRICKFIELD

Attorneys

Department of Justice

[Title Omitted in Printing]

[Filed April 19, 1972]

CROSS MOTION FOR SUMMARY JUDGMENT

Plaintiffs, pursuant to Rule 56 of the Federal Rules of Civil Procedure, upon their Complaint, their affidavits (filed with the temporary restraining order and preliminary injunction motions), their memorandum (in support of a temporary restraining order and preliminary injunction), and the oral argument presented in open Court, respectfully cross move for a summary judgment.

In support thereof, plaintiffs would show this Court that there are no material issues of fact in controversy in this litigation. Since the defendants have filed a motion for summary judgment, and since neither the plaintiffs nor the defendants have any disagreement on the facts in this case, a summary judgment is appropriate.

Respectfully submitted,

/s/ Ronald F. Pollack
RONALD F. POLLACK
Center on Social Welfare Policy
and Law
401 West 117th Street
New York, New York 10027
(212) 280-4112

/s/ Roger Schwartz
ROGER SCHWARTZ
401 West 117th Street
New York, New York 10027

Local Counsel:

John R. Kramer/R.P.
JOHN R. KRAMER
Georgetown Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20002
(202) 624-8318

The Opinion and Judgment of the District Court are
printed at Pet. App. A and B.

The Notice of Appeal is printed at Pet. App. C.

SUPREME COURT OF THE UNITED STATES

No. 72-534

**UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL.,
APPELLANTS,**

V.

JACINTA MORENO, ET AL.

APPEAL from the United States District Court for the District of Columbia.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

DECEMBER 4, 1972

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CITATIONS

Cases:

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<i>Eisenstadt v. Baird</i> , 405 U.S. 438 _____	7
<i>Flemming v. Nestor</i> , 363 U.S. 603 _____	8
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In the Supreme Court of the United States

OCTOBER TERM, 1972

No.

**UNITED STATES DEPARTMENT OF AGRICULTURE,
ET AL., APPELLANTS**

v.

JACINTA MORENO, ET AL.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the three-judge district court (App. A, *infra*) is not yet reported.

JURISDICTION

The judgment of the three-judge district court (App. B, *infra*) was entered on May 26, 1972. A notice of appeal to this Court (App. C, *infra*) was filed on June 23, 1972. On August 16, 1972, Mr.

Justice Rehnquist extended the time for docketing the appeal to and including October 3, 1972. The jurisdiction of this Court is conferred by 28 U.S.C. 1252 and 1253.

QUESTION PRESENTED

Whether the Food Stamp Act violates the Due Process Clause of the Fifth Amendment by excluding from eligibility households that contain persons who are not related to one another.

STATUTE AND REGULATIONS INVOLVED

Section 3(e) of the Food Stamp Act of 1964, 7 U.S.C. 2012(e), as amended by Section 2(a) of P.L. 91-671, 84 Stat. 2048, provides:

The term "household" shall mean a group of related individuals (including legally adopted children and legally assigned foster children) or non-related individuals over age 60 who are not residents of an institution or boarding house, but are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common. The term "household" shall also mean (1) a single individual living alone who has cooking facilities and who purchases and prepares food for home consumption, or (2) an elderly person who meets the requirements of section 2019(h) of this title.

7 C.F.R. 270.2, provides in pertinent part:

(b) "Affinity" means the relationship which one spouse because of marriage has to the blood

relatives of the other. Such a relationship once existing is not destroyed for program purposes by divorce or death of a spouse.

* * * * *

(jj) "Household" means a group of persons, excluding roomers, boarders, and unrelated live-in attendants necessary for medical, housekeeping, or child care reasons, who are not residents of an institution or boarding house, and who are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common: *Provided, That:*

(1) When all persons in the group are under 60 years of age, they are all related to each other; and

(2) When more than one of the persons in the group is under 60 years of age, and one or more other persons in the group is 60 years of age or older, each of the persons under 60 years of age is related to each other or to at least one of the persons who is 60 years of age or older. It shall also mean (i) a single individual living alone who purchases and prepares food for home consumption, or (ii) an elderly person as defined in this section, and his spouse.

* * * * *

(rr) "Related" means related by blood, affinity, or through a legal relationship sanctioned by State law. Persons shall also be considered related for purposes of the program if they are (1) a man and woman living as man and wife, and accepted as such by the community in which they live, or (2) legally adopted children, legally assigned foster children, or other children under

the age of 18, when an adult household member (18 years of age or older) acts in loco parentis to such children.

STATEMENT

This action was instituted in the district court to enjoin enforcement of the 1971 amendment¹ to Section 3(e) of the Food Stamp Act of 1964, 7 U.S.C. 2012(e), which restricted eligibility for food stamps, insofar as is here relevant, to households of "related individuals."² Appellees alleged that, while they otherwise satisfied the eligibility provisions of the Act, they were denied food stamps pursuant to that amendment because they each lived in a household containing unrelated individuals. A three-judge district court was convened pursuant to 28 U.S.C. 2282 and 2284. Upon cross-motions for summary judgment, the court held that Section 3(e), as amended, was invalid under the Due Process Clause of the Fifth Amendment and enjoined the government from denying food stamp eligibility on the basis of the 1971 amendment.

Under the Food Stamp Act of 1964, 7 U.S.C. 2011-2025, as amended, the Food and Nutrition Service of the Department of Agriculture ("FNS") administers a food stamp program under which, at the request of the States, low-income households are is-

¹ Section 2(a) of P.L. 91-671, 84 Stat. 2048.

² Appellees alternatively sought to enjoin enforcement of the implementing regulation, 7 C.F.R. 270.2(jj), on the ground that it was in conflict with the statute.

sued coupon allotments enabling them to obtain a nutritionally adequate diet at a reasonable cost to such households, with the federal government paying for the balance or bonus portion. 7 U.S.C. 2013(a), 2016(a) and 2025(a); 7 C.F.R. 270.3(a). See also the declaration of policy in 7 U.S.C. 2011. The amount such a household pays toward the purchase of food stamps is determined by FNS on the basis of a sliding scale related to the household's income. 7 U.S.C. 2016(b); 7 C.F.R. 271.5.

Eligibility for food stamps is determined in all cases on a "household" basis. 7 C.F.R. 271.3(a). Insofar as is here relevant, Section 3(e) of the Act, as amended in 1971, defines "household" as "a group of related individuals * * * who are * * * living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common." 7 U.S.C. 2012(e), as amended by Section 2(a) of P.L. 91-671, 84 Stat. 2048.

Prior to the 1971 amendment, Section 3(e) had not excluded groups of non-related individuals from the definition of an eligible household. Section 3(e), P.L. 88-525, 78 Stat. 703. The principal effect of the 1971 amendment was to exclude such groups from the definition of "household" and thus from coverage by the Act.*

* The amendment did not affect certain groups of non-related individuals over 60 years of age.

The legislative history of the amendment reflects a Congressional purpose to withhold food stamps from "communal

An implementing regulation of the Secretary of Agriculture has construed the new definition of "household" as requiring that all persons in the group be "related to each other." 7 C.F.R. 270.2 (jj) (1).⁴ It follows, therefore, that a group containing two or more individuals unrelated to one another is ineligible for food stamps under the 1971 amendment. Each of the appellees in the present case lives in a household which is ineligible to receive food stamps

'families' of unrelated individuals" (H. Rep. No. 91-1793, 91st Cong., 2d Sess., p. 8), such as "hippy communes" (116 Cong. Rec. 44431, 44439).

A similar amendment proposed earlier by Congressman Foley would have excluded from eligibility households of six or more persons where no more than two persons therein were related. 116 Cong. Rec. 41998. That proposal was made in response to "some concern expressed about utilization of the program by groups of college students enrolled in fraternities or other collections of essentially unrelated individuals who voluntarily chose to cohabit and live off food stamps." 116 Cong. Rec. 42003.

⁴ If a household contains more than one person under 60 years of age and at least one person over 60, the regulation requires that "each of the persons under 60 years of age [be] related to each other or to at least one of the persons who is 60 years of age or older." 7 C.F.R. 270.2(jj) (2). Persons are "related" for purposes of the Act if they are "related by blood, affinity [i.e., through one's spouse] or through a legal relationship sanctioned by state law." 7 C.F.R. 270.2(rr) and (b). In addition, persons are related "if they are (1) a man and woman living as man and wife, and accepted as such by the community in which they live, or (2) legally adopted children, legally assigned foster children, or other children under the age of 18, when an adult household member (18 years of age or older) acts in loco parentis to such children." 7 C.F.R. 270.2 (rr).

due solely to the fact that it contains non-related individuals.*

The district court held that the Secretary's implementing regulation, construing the Act as requiring that all individuals in a group be related in order for the group or any of its members to qualify for food stamps, was "well within the bounds of the legislative plan" (App. A, *infra*, at p. 17). It ruled, however, that the 1971 amendment created an impermissible discrimination against persons living in households containing non-related individuals, in violation of the Due Process Clause of the Fifth Amendment. The court stated that the challenged classification was not relevant to the express purposes of the Act (*i.e.*, the improvement of the agricultural economy and the alleviation of hunger; see 7 U.S.C. 2011), and it was unable to perceive a reasonable legislative basis for that classification.*

* Some of the appellees represent family households which are ineligible solely because they also include an individual not related to the members of the family—in one case a 56-year old diabetic, in another case the 20-year old daughter of a next-door neighbor—for whom the family provides care or support. See App. A, *infra*, at pp. 13-14, n. 4.

* The only possible legislative purpose fully considered by the court was that of fostering morality through discouraging unconventional living arrangements. The court viewed such a purpose as being itself constitutionally doubtful under *Griswold v. Connecticut*, 381 U.S. 479, *Stanley v. Georgia*, 394 U.S. 557, and *Eisenstadt v. Baird*, 405 U.S. 438. Assuming such a purpose, however, the the court concluded that the 1971 amendment was nevertheless unconstitutionally overbroad.